

In re MICHAELI ET AL., Application No. 09/845,606
Claims after Amendment A

REMARKS

The Office action dated October 31, 2005, and the references cited have been fully considered. In response, please enter the amendments and consider the remarks presented herein. Reconsideration and/or further prosecution of the application is respectfully requested. No new matter is added by this paper.

In terms of the amendments presented herein, claims 30 and 32 are amended to correct typographical errors. New claim 33 is added herein to add an independent apparatus claims using the term "queue" instead of a "sub-data structure", with support provided by FIGs. 1B, 1C, 1D, 1A, 2A, 2B, and 2C, and their corresponding description in the originally filed application, and by the originally filed claims, with new claim 34 specifying that the items are packets, with support provided at least on page 6, line 28 (the information corresponds to a stream of packets). For at least the reasons presented hereinafter in relation to pending independent claim 1, Applicants believe that claims 33 and 34 are allowable as the prior art of record neither teaches nor suggests using multiple queues to implement a single queue in the manner recited in these claims.

The following remarks are numbered to reference the same numbered paragraphs of the Office Action to which they are directed.

Paragraphs 5-15. Claims 1-8 and 13-32 stand rejected under 35 USC § 103(a) as being anticipated by Klausmeier et al., US Patent 5,838,915, in view of Dagli et al., US Patent Publication US 2002/0126673A1.

Applicants respectfully disagree with the Office's interpretation of Klausmeier et al. in combination with Dagli et al., and traverse the 35 USC § 103(a) rejections of the pending claims. The Office action fails to establish a *prima facie* case of obviousness as Klausmeier et al., alone or in combination with Dagli et al., neither teaches nor suggests all the claim elements and limitations as required by the MPEP. The burden is on the Office Action to establish a *prima facie* case of obviousness, which has not been done as the MPEP requires, *inter alia*, that:

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"the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure."

MPEP § 706.02(j) (*citing In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991))(emphasis added).

Moreover, to be inherent means it *must* occur. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP § 2112 (*emphasis in original*).

Neither Klausmeier et al. and Dagli et al. teach distributing a plurality of items to a plurality of sub-data structures in an order and receiving items from the sub-data structures in the order. The Office action admits in paragraph 6 that Klausmeier does not teach this, and the Office relies on paragraph [0047] of Dagli et al for this teaching. However, applicants respectfully submit that this is not a teaching of Dagli et al.; rather, it teaches that the queue data is retrieved *from a particular queue* in the same order it was *written to that same particular queue*; not in the same order that it is stored across it multiple queues would be required by a application of the references to independent claim 1 in compliance with the MPEP, as claim 1 recites a system configured to distribute a plurality of items to a plurality of sub-data structures in an order and receiving items from the sub-data structures in the order. Remember, Dagli et al. is directed towards implementing multiple queues using shared memory and the tracking information is maintained on a per queue basis for retrieving items from various memory locations in the order it was stored in the queue. There is no tracking information kept for maintaining ordering of data received among the queues. *See*, for example, paragraph [0051] which teaches this, as well as the teachings of FIGs. 3 and 4 and their corresponding discussion which also teach this. For at least these reasons, Klausmeier et al. and Dagli et al., alone or in combination, neither teach nor suggest all the limitations recited in independent claim 1.

Moreover, Applicants submit that even if Dagli et al. taught this limitation (which Applicants have traversed), then the combination of Klausmeier et al. and Dagli et al. would

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violate MPEP § 2143.01, as it would render Klausmeier et al. unfit for its intended purpose of switching packets, including forwarding higher priority packets before lower priority packets even if they were received after the lower priority packets. Klausmeier et al. maintains the order of cells belonging to a particular connection in the same order by having a separate queue for each connection, but neither teaches nor suggests maintaining the same ordering of cells as they are distributed to the different queues nor retrieving cells from the queues in the same order that they were distributed to the queues. Moreover, there are many basic reasons for storing items of a same connection in separate queues, such as to allow priority forwarding of packets, and avoiding blocking of other packet streams based on a blocking of another stream. If, as the Office presented, Klausmeier et al. would inherently be susceptible to such a blocking problems and would negate the required ability of servicing multiple priorities/classes of services of packet traffic, such that it would render it unfit for its intended purpose of switching packets.

For at least these reasons, independent claim 1 and its dependent claims of 2-8 and 29-30 are believed to be allowable. Additionally, independent claims 13 and 21-28 are rejected for the same traversed rejection presented for independent claim 1, and therefore Applicants respectfully submit that all pending claims, claims 1-8 and 13-34 are believed to be allowable.

Final Remarks. In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over the prior art of record, the application is considered in good and proper form for allowance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. Applicant requests any and all rejections and/or objections be withdrawn. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney.

If the Office action complies with MPEP § 706 and specifically 37 CFR 1.104(c)(2), then Klausmeier et al. and Dagli et al. are the best references available. As these references, alone or in combination, neither teach nor suggest all the claim elements and limitations as required by the MPEP, then all pending claims are believed to be allowable over the best art

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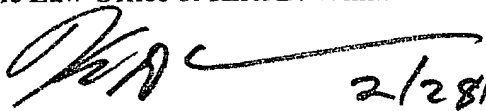
available as determined by the Office, and Applicants request the claims be allowed and the application pass to issuance.

Applicants request a one-month extension of time and have included herewith the appropriate fees. Applicants further petition any extension of time required and authorizes the Commissioner to charge any associated fees to Deposit Account No. 501430. Moreover, the Commissioner is hereby generally authorized under 37 C.F.R. § 1.136(a)(3) to treat this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 requiring an extension of time as incorporating a request therefore, and the Commissioner is hereby specifically authorized to charge Deposit Account No. 501430 for any fee that may be due in connection with such a request for an extension of time. Moreover, the Commissioner is hereby authorized to charge payment of any fee due any under 37 C.F.R. §§ 1.16 and § 1.17 associated with this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 or credit any overpayment to Deposit Account No. 501430.

Respectfully submitted,
The Law Office of Kirk D. Williams

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By

 2/28/2006
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